

**PROGRAMMATIC SAFE HARBOR AGREEMENT  
FOR THE RESTORATION OF RIPARIAN AND WETLAND HABITAT  
IN YOLO COUNTY, CALIFORNIA**

**1. INTRODUCTION**

This Programmatic Safe Harbor Agreement (Agreement) is entered into between National Audubon Society, Inc., doing business as Audubon California (Program Administrator), and the U.S. Department of Interior, Fish and Wildlife Service (Service); hereinafter collectively called the "Parties". The purposes of this Agreement are (1) to promote ecosystem restoration, enhancement and management of native riparian and/or wetland habitats in Yolo County, California for the conservation of the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) and/or the giant garter snake (*Thamnophis gigas*), and (2) to provide certain regulatory assurances to landowners participating in such restoration, enhancement, and management activities, and (3) to accomplish the foregoing without negatively affecting farming activities. This Agreement follows the Service's Safe Harbor Agreement policy (64 FR 32717) and regulations (64 FR 32706), which implement this policy.

Upon approval, this Agreement will serve as the basis for the Service to issue an enhancement of survival permit (Permit) under Section 10(a)(1)(A) of the Endangered Species Act (Act). The Permit authorizes the incidental taking of either the valley elderberry longhorn and/or the giant garter snake associated with restoration, maintenance, other routine activities, and the potential future return of any property subject to the Agreement to pre-Agreement conditions (baseline) after the term of this Agreement expires. Under this Agreement, the Program Administrator will issue Certificates of Inclusion to property owners (Cooperators) whose property (Enrolled Property) is subject to a Cooperative Agreement. Cooperative Agreements shall be effective upon the signing by the Cooperators and the Program Administrator. Certificates of Inclusion issued by the Program Administrator will extend incidental take coverage conferred by the Permit to the Enrolled Property. Cooperators agree to carry out habitat improvements described in their Cooperative Agreements and to abide by the terms and conditions set forth in this Agreement, the Cooperative Agreement, and the Permit.

**2. LIST OF COVERED SPECIES**

This Agreement covers the federally threatened valley elderberry longhorn beetle (VELB) and/or the federally and state threatened giant garter snake (GGS) which hereafter are referred to as the Covered Species. Each Cooperative Agreement will list Covered Species to be either the VELB or the GGS or both.

### **3. DESCRIPTION OF COVERED AREA**

Agriculture is Yolo County's primary industry. The eastern two-thirds of the County consists of nearly level alluvial fans, flat plains, and basins, while the western third is largely composed of rolling terraces and steep uplands used for dry-farmed grain and range. The elevation ranges from slightly below sea level near the Sacramento River to 3,000 feet along the ridge of the western mountains. The majority of Yolo County's population lives in Davis, West Sacramento, Woodland, and Winters.

The properties subject to this Agreement consist of those non-Federal lands in Yolo County, that are hereafter made subject to Cooperative Agreements between the owners or managers thereof (Cooperators) and the Program Administrator in the form attached hereto as Exhibit 1. Such properties are hereafter referred to as the enrolled properties. The area within which properties may be enrolled is depicted on the attached map and consists generally of those lands lying within the boundaries of Yolo County. The total amount of acreage for potential lands eligible to enroll in this Agreement is not expected to exceed 200,000 acres. The total amount of acreage within this area that may be restored to native riparian and/or wetland habitat is not expected to exceed 20,000 acres. The enrolled properties are to be more precisely indicated on maps attached to such Cooperative Agreements. Cooperative Agreements shall be effective upon the signing by the Cooperator and the Program Administer.

### **4. BASELINE DETERMINATION**

This Agreement provides a means by which landowners can manage and create habitat for the federally threatened VELB and/or the GGS without incurring additional regulatory restrictions on the use of their property. The Agreement, however, does not release landowners from the responsibility to avoid take of any endangered species already occupying portions of their property. Therefore, any landowner who wishes to enroll his or her property under this Agreement must allow a survey to be conducted by a qualified person satisfactory to the Service prior to finalizing the Cooperative Agreement to determine the extent to which Covered Species already inhabit the property.

For each Enrolled Property, pre-Agreement conditions (baseline) shall be based upon a survey of the Enrolled Property, not more than 18 months prior to the signing of the Cooperative Agreement, to delineate the locations of all elderberry bushes having 1 or more stems that are 1 inch or greater in diameter at the base. Additionally, the baseline assessment must contain a description of the quantity, quality, and location of suitable GGS habitat at the time the Cooperative Agreement is signed determined by the following:

1. A written description of property;
2. A map and written description of suitable habitat areas for GGS, especially areas around existing waterways; and
3. Established photo points and photos of suitable of habitat areas for GGS.

Baseline assessment may also include the following:

1. A description of intact riparian habitat, canals and other associated waterways including presence of native riparian vegetation; and
2. The presence of threats to the GGS, particularly bullfrogs.

If no suitable GGS habitat exists on the property, baseline for the GGS is 0. In order to receive the assurances regarding take of Covered Species specified in Section 7 of this Agreement, a Cooperator must maintain baseline on the Enrolled Property for the duration of the Cooperative Agreement. Establishing a baseline for population size or amount of habitat at a level above the current existing condition ("Elevated Baseline") will be discussed as appropriate with participating landowners. An Elevated Baseline will be solely based on a landowner's voluntary consent.

## **5. NET CONSERVATION BENEFITS**

Implementation of this Agreement is reasonably expected to provide a "net conservation benefit" to the Covered Species, because the collective management activities performed by the Cooperators pursuant to this Agreement are expected to provide an increase in the Covered Species' population and/or enhance, restore, or maintain the Covered Species' habitat.

Specifically, this Agreement supports recovery objective number 1 and 6 listed in the Recovery Plan for the Giant Garter Snake (USFWS 1999) and recovery objective number 5 listed in the Recovery Plan for the Valley Elderberry Longhorn Beetle (USFWS 1984) by restoring habitat sites within the presumed historical range, managing habitat conditions by removing exotic species, and protecting habitat restoration sites for a minimum of 10 years. It is anticipated that many cooperators will restore native plant species typical of Valley Foothill Riparian habitats, which can encourage colonization of GGS and VELB and provide habitat for other species. Additionally, monitoring activities will support more extensive documentation of extant populations.

The California National Diversity Data Base records occurrences of GGS north of I-80 and between I-5 and the Sacramento River, and a planned study by Audubon CA, Yolo County RCD and USGS will assess the quality of habitat types for supporting giant garter snakes. One goal of the study is to advise land managers on snake-friendly procedures as well as revise a pre-existing best management practice document (USFWS 1999).

### **5.A. MINIMIZING AND MITIGATING INCIDENTAL TAKE**

#### **Full Mitigation**

In compliance with California Code Section 2081 et.seq., the impacts of any authorized take shall be fully mitigated. It has been determined that as a result of implementation of

this Safe Harbor Agreement, that a net conservation benefit to the covered species as defined by Federal Safe Harbor policy will occur. The cumulative, accruing benefits of management activities by Cooperators pursuant to this Agreement are expected to provide an increase in the Covered Species' population and enhance, restore, or maintain the covered species habitat as specified in Section 5 of this Agreement. Implementation of this Agreement will also serve to compliment and enhance conservation actions for covered species identified and implemented through the Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) currently being developed for Yolo County. In addition, it is fully expected that long-term benefits to the covered species will accrue beyond the 30 year Enhancement of Survival Permit term of this Agreement through the voluntary commitment of landowners who choose to permanently maintain improvements made on their property.

Over the 30 year programmatic permit term, it is expected numerous landowners will enter and exit cooperative agreements creating favorable habitat conditions for the covered species over the landscape and a cumulative conservation value greater than if the Programmatic Safe Harbor Agreement were not in place. Implementation of management activities outlined in this agreement will: reduce habitat fragmentation rates, maintain occupied habitat, increase habitat connectivity, improve species population distribution, and contribute to research knowledge, management techniques, and/or conservation strategies.

### **Impact Minimization**

In compliance with California Code Section 2081 the impacts of any authorized take shall be minimized. Minimization measures include the following:

- Provisions in Section 6 of the Cooperative Agreement attached hereto that require Cooperators to notify the Program Administrator at least 90 days (except when precluded by emergency situations) prior to commencing any management activity likely to reduce the Baseline Conditions on the Property, and to allow the Program Administrator or the Service the opportunity to rescue and relocate any individual VELB or GGS from the Property to avoid their loss.
- Provisions in Exhibit 3 (Management Activities) to this Agreement which include: planting only native vegetation acquired from local sources; avoiding planting trees along waterways; maintaining adequate water levels from early spring through mid fall; maintaining emergent herbaceous vegetation in aquatic habitat and vegetative growth in uplands to provide escape cover and foraging habitat; maintaining small mammal burrows within 200 feet of aquatic habitat;

Additional provisions in Section 7.A.1. requires the Program Administrator to inform the Service within 30 days of any notification it receives from a Cooperator (or from a neighboring landowner who has entered into an agreement pursuant to Section 8 of this Agreement) of the latter's intent to make a change in land use likely to permanently reduce the amount of habitat for the GGS and/or reduce the number of living elderberry

bushes with one or more stems of one inch or greater in diameter at the base. Additionally the Program Administrator agrees to reasonably cooperate with the Service in the event that it chooses to relocate elderberry bushes and/or capture and relocate potentially affected individuals of the Covered Species in response to such notification. Section 7.A.4. hereto requires the Program Administrator to notify the Service of any living or dead specimens of the Covered Species of which it becomes aware on the enrolled properties

## **6. MANAGEMENT ACTIVITIES**

Each Cooperative Agreement shall specify a unique set of riparian and/or wetland restoration, enhancement, and management activities as listed in the attached Exhibit 3 to be carried out on the Enrolled Property. The object of such activities is to create healthy native riparian plant and/or wetland community, on the enrolled properties. The Service has determined that implementation of these activities is expected to produce a net conservation benefit for the Covered Species.

- For the permit described in Section 7 and 10 of this Agreement to include the VELB as a Covered Species, individual Cooperative Agreements shall include at least one activity from Exhibit 3 listed under the heading "Standard Activity Beneficial to the Valley Elderberry Longhorn Beetle".
- For the permit described in Section 7 and 10 of this Agreement to include the GGS as a Covered Species, individual Cooperative Agreements shall include at least one activity from Exhibit 3 listed under the heading "Standard Activity Beneficial to the Giant Garter Snake".
- For the permit described in Section 7 and 10 of this Agreement to include both the VELB and the GGS individual Cooperative Agreements shall include at least one activity from Exhibit 3 listed under the heading "Standard Activity Beneficial to the Valley elderberry longhorn beetle" and at least one activity from Exhibit 3 listed under the heading "Standard Activity Beneficial to the Giant Garter Snake".
- Activities listed as "Additional Activities" may also be implemented at the Program Administrator and Cooperators discretion.

## **7. OTHER RESPONSIBILITIES OF THE PARTIES**

A. In addition to entering into Cooperative Agreements with willing non-Federal landowners and managers, as described above, the Program Administrator agrees to:

1. Inform the Service within 30 days of any notification it receives from a Cooperator (or from a neighboring landowner who has entered into an agreement pursuant to Section 8 of this Agreement) of the latter's intent to make a change in land use likely to permanently reduce the amount of habitat for the GGS and/or reduce the number of living elderberry bushes with 1 or more stems of 1 inch or greater in diameter at the base. Additionally the Program Administrator agrees to reasonably cooperate with the Service

in the event that it chooses to relocate elderberry bushes and/or capture and relocate potentially affected individuals of the Covered Species in response to such notification;

2. At minimum every 3 years at maximum every 5 years the Program Administrator will conduct surveys in a manner approved by the Service on Enrolled Properties to assess the condition of the habitat being managed thereon. Such surveying activities may be carried out on the Program Administrator's behalf by another qualified entity pursuant to an agreement with the program Administrator and Cooperators.

3. Provide the Service with an annual report, due by March 31 of each year, in the form attached as Exhibit 2;

4. Notify the Service of any living or dead specimens of the Covered Species of which it becomes aware on the enrolled properties; and

5. Furnish the Service with copies of all Cooperative Agreements within 2 weeks after they are signed.

B. In consideration of the foregoing, the Service agrees to:

1. Upon execution of the Agreement, issue to the Program Administrator a permit in accordance with Section 10(a)(1)(A) of the Act, and valid for 30 years authorizing take of the Covered Species as a result of restoration, maintenance, routine activities, and the potential future return of any enrolled land to Baseline, provided that such taking shall be consistent with maintaining Baseline on the Enrolled Property.

2. Provide to the Program Administrator and Cooperators technical assistance, to the maximum extent practicable, when requested; and provide information on Federal funding programs.

## **8. OTHER LANDOWNERS WHO MAY SECURE INCIDENTAL TAKE AUTHORIZATION**

Landowners who own land that abuts and is immediately adjacent to an Enrolled Property may, without committing to undertake any management activities described in Section 5 on such adjoining land, secure the incidental take authority conferred by the permit issued by the Service to the Program Administrator pursuant to paragraph 7, provided: (1) such adjoining landowner enters into a written agreement with the Program Administrator in the form attached as Exhibit 5; (2) such written agreement specifies the Baseline Conditions on such adjoining property; (3) activities resulting in such incidental take are consistent with maintaining the Baseline Conditions on such adjoining property by a qualified person satisfactory to the Service.

## **9. AGREEMENT AND PERMIT DURATION**

The Agreement becomes effective upon issuance by the Service of the Section 10(a)(1)(A) permit described in Section 7 of this Agreement, and will be in effect for 30 years. The Permit will have a term of 30 years. Cooperative Agreements developed pursuant to this Agreement will be for a term of at least 10 years. This Agreement and the permit described in Section 7 of this Agreement may each be extended by mutual written consent of the Parties.

## **10. ASSURANCES REGARDING TAKE OF COVERED SPECIES**

Provided that such take is consistent with maintaining the baseline identified in Section 4 of this Agreement, the Section 10(a)(1)(A) permit referenced in Section 7 shall authorize the taking of Covered Species incidental to otherwise lawful activities by Cooperators (and by neighboring landowners who have entered into agreements pursuant to Section 8 of this Agreement), their employees or agents in the following circumstances:

- A. Implementing the management activities identified in their Cooperative Agreement;
- B. Making any lawful use of the Enrolled Property of the Cooperator after the management activities identified in the Cooperative Agreement have been initiated, including but not limited to farming, ranching, other agricultural use including use of registered pesticides and herbicides (provided that such use is in accordance with label restrictions and Exhibit 3) and recreation; and
- C. Returning Enrolled Property to Baseline

## **11. MODIFICATIONS**

A. Modification of the Agreement. Either party may propose amendments to this Agreement by providing written notice to, and obtaining the written concurrence of, the other Party. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon the other Parties' written concurrence.

B. Termination of the Agreement. As provided for in Part 12 of the Service's Safe Harbor Policy (64 FR 32717), a Cooperator may terminate his Cooperative Agreement with the Program Administrator for circumstances beyond his or her control by giving written notice to the Program Administrator. In such circumstances, the Cooperator may, pursuant to the permit referenced in Section 7 of this Agreement, return the Enrolled Property to Baseline even if the management activities identified in the Cooperative Agreement have not been fully implemented.

C. Permit Suspension or Revocation. The Service may suspend or revoke the permit referenced in Section 7 above for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Program Administrator or any Cooperator has the right to appeal any suspension or revocation to a mutually agreed upon arbitrator.

D. Baseline Adjustment. The Baseline for any Enrolled Property may, by mutual agreement of the Parties and the Cooperator, be adjusted if, during the term of the Cooperative Agreement and for reasons beyond the control of the Cooperator or as an unintended result of properly-implemented management activities, the amount of baseline habitat is reduced from what it was at the time the Cooperative Agreement was negotiated.

E. Inability of the Program Administrator to Continue. If the Program Administrator shall, for any reason, cease to be able to perform its obligations under this Agreement, it shall give written notice of that fact to the Service at the earliest possible time. Upon receiving such notice, the Service may, at its discretion after consultation with Cooperators, either amend this Agreement and the associated permit to substitute a new Program Administrator, or, if a Cooperator prefers, convert any previously approved Cooperative Agreement into an individual agreement between the Cooperator and the Service under the same substantive terms.

## **12. OTHER MEASURES**

A. Remedies. Each party shall have all remedies otherwise available to enforce the terms of the Agreement and the Permit, except that no party shall be liable in damages for any breach of this Agreement, any performance or failure to perform an obligation under this Agreement or any other cause of action arising from this Agreement.

B. Dispute Resolution. The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties.

C. Succession and Transfer. As provided in Part 11 of the Service's Safe Harbor Agreement Policy, if a Cooperator transfers his or her interest in the Enrolled Property to another non-Federal entity, the Service will regard the new owner or manager as having the same rights and responsibilities with respect to the Enrolled Property as the original Cooperator, if the new owner or manager agrees to become a party to the Cooperative Agreement in place of the original Cooperator.

D. Availability of Funds. Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this Agreement to expend any



Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

E. Funding Assurances. All projects will receive grant funding for implementation. Funding assurances shall be provided through the grant/agreement that is attached to individual Cooperative Agreements as Exhibit D. This Exhibit specifically identifies monies earmarked for implementation of required habitat improvements including: baseline assessments and reporting requirements.

F. No Third-Party Beneficiaries. This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law. In the event that any third party successfully challenges the permit referenced in Section 7 hereof, the Service shall, at the request of a Cooperator, remove and relocate away from the Enrolled Property any elderberry bushes on the Enrolled Property in excess of Baseline Conditions.

G. Other Listed Species, Candidate Species, and Species of Concern. In the event that other listed species or species living in riparian or aquatic habitat not initially covered by this Agreement are subsequently listed as threatened or endangered under the Endangered Species Act the Parties agree to amend this Agreement, and all Cooperative Agreements previously approved hereunder, to include such other species as Covered Species. The amendment of any Cooperative Agreement pursuant to this provision shall not change the Baseline Conditions set forth in such Cooperative Agreement at the time they were executed.

H. Repopulation by Other Listed Species. In the event that other listed species not initially covered by this Agreement are found in residence on the Enrolled Property and all parties agree their occurrence is a result of management activities described in this agreement, the Parties will amend this Agreement and all Cooperative Agreements previously approved hereunder, to include such other listed species as Covered Species. The amendment of any Cooperative Agreement pursuant to this provision shall not change the Baseline Conditions set forth in such Cooperative Agreement at the time they were executed.

I. Notices and Reports. Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the address listed below, as appropriate:

Safe Harbor Program  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, CA 95825

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Safe Harbor Agreement to be in effect as of the date that the Service issues the permit referred to in Section 7 above.

Bob Percasie

National Audubon Society, Inc  
Chief Operation Officer

10/10/07

Date

Chris C. Mondt

ACTING

Field Supervisor, Sacramento Field Office  
U.S. Fish and Wildlife Service

10/26/07

Date

## Cooperative Agreement

This is a voluntary agreement that recognizes the unique and important role that private landowners in California can play in helping wildlife valued by the people of California and of the nation. The purpose of the agreement is to enable land management activities beneficial to rare species be carried out on privately owned land while minimizing the impact of such activities on the right and ability of the owner thereof to use it as he or she wishes. The terms of this agreement are as follows:

1. The National Audubon Society, Inc., doing business in California as Audubon California ("Program Administrator"), and \_\_\_\_\_ (Cooperator) have entered into this Agreement to improve habitat for the betterment of wildlife, including the federally threatened valley elderberry longhorn beetle (VELB) and/or the federally and state threatened giant garter snake (GGS) on certain land owned by the Cooperator that is delineated on the attached map (Exhibit A), and referred to herein as the Enrolled Property.

Hereafter the Covered Species relevant to this agreement is (are):

\_\_\_\_\_ valley elderberry longhorn beetle  
\_\_\_\_\_ giant garter snake

Management activities beneficial to the Covered Species are attached hereto as Exhibit B.

2. The United States Fish and Wildlife Service (Service) has issued to the Program Administrator an endangered species permit that authorizes, until the year [20..], the incidental taking of valley elderberry longhorn beetle and/or giant garter snake by Cooperator and other persons who enter into cooperative agreements with the Program Administrator pursuant to the permit.
3. Cooperator agrees to conduct, or allow to be conducted, activities to restore, enhance, or manage riparian and wetland habitat in accordance with the plan set forth in the attached Exhibit B, and maintain such habitat for a minimum period of 10 years from the date of this Agreement.
4. The Cooperator further agrees to provide the Program Administrator with a brief report, due December 31 of the year following the signing of this Cooperative Agreement, and annually thereafter. Such report, in the format shown in Exhibit 4 or in any other simple format to be developed by the Program Administrator, shall identify any management activities undertaken to restore, enhance, or manage native riparian and/or wetland habitat on the property subject to this Cooperative Agreement, as well as any changes in the extent of riparian and/or wetland habitat in the preceding year. The Cooperator understands and agrees that the Program Administrator will include these annual reports with the reports that it is required to submit to the Service.

5. In consideration of the foregoing, the Program Administrator has issued to the Cooperator the attached Certificate of Inclusion under the Program Administrator's permit. This Certificate authorizes the Cooperator and the Cooperator's successors or assigns:

- a) To take the species identified above incidental to implementing the management activities set forth in this Agreement;
- b) After initiation of, and consistent with such management activities, to carry out any other lawful activity that may cause the incidental taking of such species on Cooperator's property, provided that baseline habitat conditions are maintained.

As used in this Cooperative Agreement, "incidental" take refers to the unintentional or unavoidable killing or injuring of the species identified above in the course of carrying out otherwise lawful activities. Nothing in this Cooperative Agreement authorizes Cooperator to capture, collect, or deliberately kill or injure any such species.

6. After the agreed-upon management activities have been initiated, Cooperator agrees to give the Program Administrator at least 90 days notice (except when precluded by emergency situations) prior to management changes which will reduce the amount of baseline habitat on the Enrolled Property and to allow the Program Administrator or the Service the opportunity to rescue and relocate any individuals of the Covered Species from Cooperator's land to avoid their loss.

7. The Cooperator and the Program Administrator agree that a baseline assessment has been conducted in accordance with methods outlined in Section 4 of the Agreement. The results of the baseline assessment are delineated in Attachment C and shall be considered "Baseline Conditions" applicable to the property. So long as baseline habitat conditions are maintained, Cooperator may incidentally take the species as provided in Part 5 above. If requested by the Service within 90 days of its receiving a copy of the Cooperative Agreement, the Cooperator agrees to allow the Service access to the enrolled portion of Cooperator's property for the sole purpose of verifying the baseline determination set forth in this paragraph.

8. Successors and assigns may incur the responsibilities and benefits of this Agreement by becoming a party thereto, unless terminated in writing as specified below. If Cooperator decides to sell or otherwise transfer ownership or management of the property, Cooperator agrees to give the Program Administrator notice of such decision prior to the intended sale or transfer and to give the purchaser or transferee notice of this Cooperative Agreement so that the purchaser or transferee can become a party to it if he or she so wishes. Cooperator will inform the Program Administrator in the event all, or part of, the Cooperator's property delineated on the map labeled Exhibit A is transferred to another owner.

9. The Cooperator shall grant the Program Administrator access to Cooperator's property to confirm that the restoration, enhancement, or management activities set forth in Exhibit B have been conducted, and to assess the condition of the habitats being managed under the Cooperative Agreement. The Program Administrator shall give the Cooperator reasonable notice of these visits and shall be accompanied by the Cooperator or an agent of the Cooperator, if the Cooperator so desires.

10. The Cooperator, or the Cooperator's successors or assigns, may terminate the Cooperative Agreement for reasons beyond their control at any time by giving 60 days written notification to the Program Administrator, in which case the Cooperator or the Cooperator's successors or assigns' right to incidentally take the species under the permit and Certificate of Exclusion shall expire two years after giving such notice. This Cooperative Agreement can be renewed, extended, or modified at any time subject to both the Cooperator's and the Program Administrator's approval. The Baseline Conditions in any renewal or extension of this Cooperative Agreement shall be the same as set forth in Part 7 above.

11. Cooperator and the Program Administrator agree that, with respect to liability and indemnification for injuries to persons or property arising out of this Agreement, neither party shall be liable, or defend and hold harmless the other party, for injury to any employee or agent of either party nor for damage to property of either party, unless such injury or damage is caused by the other party's negligence or willful acts.

12. So long as the permit and Certificate remain in effect, and provided the management activities required by this Agreement have been carried out, the Cooperator may exercise the right conferred by the Program Administrator's permit and the Certificate to incidentally take the species identified above on the Enrolled Property.

**Program Administrator:**

National Audubon Society, Inc.  
d/b/a Audubon California  
5265 Putah Creek Road  
Winters, CA 95694  
Attn: Vance Russell

\_\_\_\_\_  
National Audubon Society, Inc.  
d/b/a Audubon California

\_\_\_\_\_  
Cooperator

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**Exhibit A**

[map of the property subject to the cooperative agreement]

## **Exhibit B**

[specifications for management actions to be carried out]

## **Exhibit C**

[Baseline Conditions]



**Exhibit D**

[Copy of grant agreement demonstrating funding for implementation and management activities described in Cooperative Agreement]

## CERTIFICATE OF INCLUSION

This certifies that the property described as follows [DESCRIPTION], owned by [NAME OF COOPERATOR], is included within the scope of Permit No.        issued by the U.S. Fish and Wildlife Service on [DATE] for a period of     years to Audubon California [Program Administrator] under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(A). Such permit authorizes certain activities by participating landowners as part of a safe harbor program to restore and enhance riparian and/or wetland habitats for the valley elderberry longhorn beetle and/or the giant garter snake. Pursuant to that permit and this certificate, the holder of this certificate is authorized to engage in activities on the above described property that may result in the incidental taking of the:

       valley elderberry longhorn beetle  
       giant garter snake;

All incidental taking of the species listed above is subject to the terms and conditions of the permit listed above and the cooperative agreement entered into pursuant thereto by Audubon California [Program Administrator] and [NAME OF COOPERATOR] on [DATE].

\_\_\_\_\_  
Name and Title of Representative  
from Audubon California [Program Administrator]

Date: \_\_\_\_\_

### Literature Cited

Barr, C.B. 1991. The distribution, habitat, and status of the valley elderberry longhorn beetle *Desmocerus californicus dimorphus*. U.S. Fish and Wildlife Service; Sacramento, California.

Carpenter, N.M., M.L. Casazza, and G.D. Wylie. 2002. *Rana catesbeiana*: Diet. Herpetological Review. 33:130-131.

Nafis, Gary. [www.californiaherps.com](http://www.californiaherps.com).

U.S. Fish and Wildlife Service. 1984. Valley Elderberry Longhorn Beetle Recovery Plan. U.S. Fish and Wildlife Service, Portland, Oregon. 62 pp.

U.S. Fish and Wildlife Service. 1999. Draft Recovery Plan for the Giant Garter Snake (*Thamnophis gigas*). U.S. Fish and Wildlife Service, Portland, Oregon. ix + 192 pp.

U.S. Fish and Wildlife Service. 1999. Conservation Guidelines for the Valley Elderberry Longhorn Beetle. U.S. Fish and Wildlife Service, Sacramento, California. 12 pp.

Wylie, G.D., M.L. Casazza, and M. Carpenter. 2004. Bullfrogs are significant predators of giant garter snake young of the year. USGS, BRD, Dixon Field Station.

Wylie, G.D. <http://www.werc.usgs.gov/dixon/snake.html>.

**EXHIBIT 2**  
**Annual Report for**  
**Safe Harbor Agreement between the U.S. Fish and Wildlife Service**  
**and National Audubon Society, Inc. doing business in California as Audubon**  
**California**

**Permittee's Name:** National Audubon Society, Inc. doing business in California as Audubon California

**Permit Tracking Number:** TE-XXXXXX-0

**Location:** Yolo County, California

**Agreement Approved by:** Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service

**Covered Species:**

\_\_\_\_\_ valley elderberry longhorn beetle  
\_\_\_\_\_ giant garter snake;

**Report on the Monitoring Program (1-2 paragraphs):** Describe in general terms the results of any assessments carried out pursuant to Section 7 of the Safe Harbor Agreement in the year covered by the report; append a copy of the report. Describe any major changes in habitat included in the baseline survey. Append to this report copies of all reports submitted to the Program Administrator by Cooperators since the last annual report.

**Date Annual Report is Due:** On or before March 1, for the prior calendar year

**Date Annual Report was Received:** \_\_\_\_\_

**Date Annual Report was Reviewed:** \_\_\_\_\_

**Signature of Reviewer:** \_\_\_\_\_

**Printed Name and Phone # of Reviewer** \_\_\_\_\_

**Report on Area wide Management and Conservation Actions (1-2 paragraphs):** As necessary to supplement the monitoring reports above, summarize the condition of areas on the collective enrolled properties. Describe any apparent year-to-year trends in restoration success in the region. Describe any relevant regional conditions (e.g., drought, flood) that may enhance understanding of the appended annual reports from the Cooperators. Finally, please convey any suggestions for adaptive management of created areas that may have emerged from the program so far.

### Exhibit 3 Management Activities

The Service has determined that implementation of the management activities listed below is expected to produce a net conservation benefit for the Covered Species, either VELB or GGS or both. As more information about the Covered Species becomes available management activities may be added or modified. If a detailed plan has been developed to satisfy funding requirements, a funding agreement may be attached to the Cooperative Agreement.

Cooperative Agreements shall specify the riparian and/or wetland restoration, enhancement, and management activities to be carried out on the Enrolled Property, and which species the management activity benefits.

#### **Standard Activities Beneficial to Valley Elderberry Longhorn Beetle**

For Cooperative Agreements that include VELB as a Covered Species at least one of the following management activities shall be included in Exhibit B of the Cooperative Agreement to provide the reasonable expectation for a net conservation benefit for VELB.

- Plant native riparian and wetland species in riparian areas, waterways, and canals such as: purple needle grass (*Nassella pulchra*), blue wild rye (*Elymus glaucus*), creeping wild rye (*Leymus triticoides*), meadow barley (*Hordeum brachyantherum*), *Juncus* spp., *Carex* spp., *Salix* spp. Fremont cottonwood (*Populus fremontii*), California sycamore (*Platanus racemosa*), willows (*Salix* spp.) valley oak (*Quercus lobata*) Box elder (*Acer negundo* var. *californicum*), Oregon Ash (*fraxinus latifolia*), wild grape (*Vitis californica*), Dutchman's pipe vine (*Aristolochia californica*), wild clematis (*Clematis* spp). Only plant material from local sources including should be used.
- Plant elderberry bushes. Riparian areas and adjacent upland habitats can be improved by planting elderberry (*Sambucus mexicana* and *Sambucus racemosa*). Cuttings and seedlings must come from local sources.
- Minimize competition from exotic weeds. Examples of especially pernicious weeds which should be removed include: Chinese tree of heaven (*Ailanthus altissima*), black locust (*Robinia pseudoacacia*), yellow star thistle (*Centaurea solstitialis*), medusa head (*Taeniatherum caput-medusae*), perennial pepperweed (*Lepidium latifolium*), tamarisk (*Tamarisk parviflora*), *Eucalyptus* spp., barbed goatgrass (*Aegilops triuncialis*) and arundo (*Arundo donax*).
- Limit the application of pesticides and herbicides within 100 feet of elderberry plants with at least one stem 1.0" in diameter or greater, and hand or ground apply

pesticides or herbicides within 20 feet of the drip line of such plants. All pesticides and herbicides must be applied according to registered label conditions and in compliance with the California State Department of Pesticide Regulations.

#### **Standard Activities—Giant Garter Snake**

For Cooperative Agreements that include GGS as a Covered Species at least one of the following management activities shall be included in Exhibit B of the Cooperative Agreement to provide the reasonable expectation for a net conservation benefit for GGS.

- Protect occupied landscapes by: maintaining adequate water levels from early spring through mid fall; planting/maintaining emergent herbaceous vegetation in aquatic habitat and vegetative growth in uplands to provide escape cover and foraging habitat.
- Avoid planting trees along waterways
- Maintain small mammal burrows within 200 feet of aquatic snake habitat to promote the use of burrows by snakes for hibernation.
- On rice farms, take extra care when working near rice boxes and other irrigation structures.
- On rice farms drive carefully and minimize trips on top of ditch banks especially during spring planting.

#### **Additional Activities**

A Cooperator and the Program Administrator may elect to include one or more of the following management activities beneficial VELB in a Cooperative Agreement:

- Avoid and protect existing elderberry plants by following avoidance and protective measures as described in "Conservation Guidelines for the Valley Elderberry Longhorn Beetle" (USFWS 1999).
- Prevent the introduction and spread of Argentine ant (*Linepithema humile*) by inspecting Nursery stock and other agricultural products for ants.
- Manage livestock grazing in riparian restoration areas.
- Connect isolated riparian areas with known VELB populations.

**Exhibit 4**  
**Annual Report from Cooperator to Program Administrator**

Directions: Take a walk around riparian and/or wetland areas on your property and observe the overall condition of vegetation. You may wish to have your baseline maps handy for reference and a camera for taking photos. Explanations can be brief (one or two sentences).

At the discretion of the Program Administrator, you may substitute this form for a monitoring report provided to you by a biologist or restoration professional familiar with the valley elderberry longhorn beetle and/or the giant garter snake.

**Assessment of Habitat Conditions**

1. In a few sentences please describe the general condition of the new restoration project on your property. Include information about plant location, composition and density, condition of banks, a description of the water level and clarity.
2. Provide photographs taken from established photo points to show annual changes in or around the irrigation ponds. These locations should be marked for reference on Exhibit B and should remain the same from year to year.
3. In a few sentences please describe the general condition of new vegetation planted. Include information about plant vigor, if they the plants have spread out since last year, how many different kinds of plants are growing, if any have died since last year, and any other relevant or helpful information.
4. Provide photographs taken from several locations to show annual changes in vegetation growing in riparian and/or wetland areas. These locations should be marked for reference on Exhibit B and should remain the same from year to year.

**Condition of Other Native Plants and Areas around Irrigation Ponds**

5. Has the extent of the area that supports VELB and/or GGS changed within the past year? For example, has the area expanded naturally or has it markedly decreased due to fire, flood, drought, or other natural disturbance?

- Expanded \_\_\_\_
- Decreased \_\_\_\_
- Stayed the same \_\_\_\_

Please explain briefly the extent and causes of any noticeable increase or decrease.

6. Did non-native grasses or other invasive species

- Spread \_\_\_\_\_
- Degrade or dominate portions of the native plantings \_\_\_\_\_
- Remain about the same \_\_\_\_\_

Please describe any action you took to control the spread of non-natives.

**Management Activities**

7. Please describe any maintenance work in or adjacent to restoration areas.

8. Please list which month each of the activities took place in.



## EXHIBIT 5

### Neighboring Landowner Agreement

1. [Owner] owns land (hereafter "the Property") in Yolo County, California, that is designated on the attached map and that is adjacent to land enrolled in the Programmatic Safe Harbor Agreement between National Audubon Society, Inc., doing business in California as Audubon California ("Audubon California") and the United States Fish and Wildlife Service (hereafter "the Service"), dated [date]. The Programmatic Safe Harbor Agreement, and the permit issued by the Service to Audubon California in connection therewith, authorizes participating landowners who enter into cooperative agreements to restore and enhance riparian and wetland habitats to take endangered valley elderberry longhorn beetle and/or giant garter snake incidental to farming, ranching, and other lawful activities on the enrolled land, provided that baseline habitat conditions as specified in such cooperative agreements are maintained.

2. Audubon California serves as the Program Administrator of the foregoing Programmatic Safe Harbor Agreement, and as such is authorized by that Agreement to enter into both cooperative agreements with landowners who enroll land in the Programmatic Agreement, and similar Neighboring Landowner Agreements with landowners who own land adjacent to land enrolled in the Agreement. Such Neighboring Landowner Agreements confer upon such neighboring landowners the same rights to take endangered species incidental to lawful activities on such neighboring land, subject to requirements as are set forth in this Agreement, as cooperative agreements confer upon landowners who enroll land in the Programmatic Agreement. Audubon California has determined that the "Baseline Conditions" applicable to the Property are as follows:

1. A written description of property;
2. A map and written description of suitable habitat areas for GGS, especially areas around existing waterways; and
3. Established photo points and photos of suitable of habitat areas for GGS.

Baseline assessment may also include the following:

1. A description of intact riparian habitat, canals and other associated waterways including presence of native riparian vegetation; and
2. The presence of threats to the GGS, particularly bullfrogs.

This Agreement provides a means by which landowners can manage and create habitat for the federally threatened Giant Garter Snake "GGS" and/or the Valley elderberry longhorned beetle "VELB" without incurring additional regulatory restrictions on the use of their property. The Agreement, however, does not release landowners from the responsibility to avoid take of any endangered species already occupying portions of their property. Therefore, any landowner who wishes to enroll his or her property under this Agreement must allow a baseline assessment to be conducted prior to finalizing the

So long as at least Baseline Conditions for the Covered Species remain in the same on the Property, [owner] may incidentally take the Covered Species in the course of any lawful use of the property, subject to Section 4 below. As used herein, "incidental" take refers to the unintentional or unavoidable killing or injuring valley elderberry longhorn beetle and giant garter snake in the course of carrying out otherwise lawful activities. Nothing herein authorizes [Owner] to capture, collect, or deliberately kill or injure any VELB or GGS.

4. [Owner] agrees to give Audubon California at least 90 days notice (except when precluded by emergency situations) prior to commencing any management activity likely to reduce the Baseline Conditions on the Property, and to allow the Program Administrator or the Service the opportunity to rescue and relocate any individual VELB or GGS from the Property to avoid their loss.

5. This Neighboring Landowner Agreement remains in effect until the expiration of the Programmatic Safe Harbor Agreement between the Service and Audubon California on [date].

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[Owner]

Date

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Audubon California

Date